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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MARTIN E. JEFFRIES,

Defendant and Appellant.

C069335

(Super. Ct. No.  
10F05786)

Defendant Martin E. Jeffries pleaded guilty to first degree burglary and admitted a prior strike and a prior prison term. The trial court sentenced him to nine years in prison.

Defendant contends (1) his presentence credit should not have been subject to the 15 percent limit set forth in Penal Code section 2933.1, and (2) he is entitled to additional presentence credit because the prospective application of the Criminal Justice Realignment Act of 2011 (Realignment Act) (Stats. 2011, ch. 15) violates equal protection.

We will affirm the judgment.

#### BACKGROUND

According to the factual basis for the plea, defendant entered the attached garage of John Kotarsky's home on September 5, 2010, with the intent to commit larceny. When Kotarsky confronted defendant in the garage, defendant departed.

Defendant pleaded guilty to first degree burglary. (Pen. Code, § 459.)<sup>1</sup> He admitted a prior strike and a prior prison term. (§§ 1170.12, 667, subds. (b)-(i), 667.5, subd. (b).) The trial court sentenced him to the stipulated term of nine years in prison.

#### DISCUSSION

##### I

Defendant contends he is not subject to the 15 percent limit on presentence conduct credit set forth in section 2933.1 because the information did not plead the burglary as a violent felony and defendant did not plead guilty to the burglary as a violent felony. We disagree.

Section 2933.1 provides that presentence conduct credit is limited to 15 percent of time served for any defendant with a current conviction for a violent felony. (§ 2933.1, subd. (c).) First degree burglary is a serious felony (§ 1192.7, subd. (c)(18)), but it is also a violent felony when "it is charged and proved that another person, other than an accomplice, was

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

present in the residence during the commission of the burglary.”  
 (§ 667.5, subd. (c)(21).)

The information alleged that defendant unlawfully entered an inhabited dwelling house and portion of a building “occupied” by Kotarsky. In a case decided after briefing was concluded, the California Supreme Court said due process requires only that a defendant receive “sufficient notice of the facts that restrict his ability to earn credits and, if he does not admit them, a reasonable opportunity to prepare and present a defense.” (*People v. Lara* (2012) 54 Cal.4th 896, 906 (*Lara*).)

During recitation of the factual basis for the plea, defense counsel added additional factual detail with the prosecutor’s approval. Defense counsel added that defendant “entered three feet into the garage and was confronted with the owner, who had a gun, and [defendant] exited.”

The trial court subsequently informed defendant during the plea colloquy that he would be subject to a 15 percent limitation on presentence conduct credit, and there was no objection.

On this record, there was sufficient notice and proof to establish the burglary as a violent felony.

## II

The Realignment Act amended the law to provide two days of credit for every two days of presentence custody. (§ 4019, subds. (b), (c), (f).) Such credit is not reduced by a defendant’s prior conviction for a serious or violent felony, but it only applies prospectively to defendants serving

presentence incarceration for crimes committed on or after October 1, 2011. (§ 4019, subd. (h).) The change in the law does not apply to defendant because he committed the burglary on September 5, 2010.

Defendant nonetheless contends that prospective application of the Realignment Act violates equal protection. However, the California Supreme Court indicated otherwise in *Lara, supra*, 54 Cal.4th at p. 906, fn. 9. Citing *People v. Brown* (2012) 54 Cal.4th 314 (*Brown*), the Supreme Court concluded in this context that “prisoners who serve their pretrial detention before such a law’s effective date, and those who serve their detention thereafter, are not similarly situated with respect to the law’s purpose. (*Brown*, at pp. 328-329.)” (*Lara, supra*, 54 Cal.4th at p. 906, fn. 9.)

In addition, the Realignment Act did not repeal section 2933.1, which limits presentence conduct credit to 15 percent

"[n]otwithstanding Section 4019 or any other provision of law[.]" (§ 2933.1, subd. (c).)

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_, MAURO, J.

We concur:

\_\_\_\_\_, HULL, Acting P. J.

\_\_\_\_\_, HOCH, J.